

Panaji, 7th October, 2004 (Asvina 15, 1926)

SERIES II No. 28

OFFICIAL GAZETTE



GOVERNMENT OF GOA

SUPPLEMENT

GOVERNMENT OF GOA

Department of Labour

Notification

No. 28/1/2004-LAB

The following Award passed by the Industrial Tribunal of Goa, at Panaji-Goa on 28-1-2004 in reference No. IT/24/2003 is hereby published as required by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

Vasanti H. Parvatkar, Under Secretary (Labour).

Panaji, 12th February, 2004.

IN THE INDUSTRIAL TRIBUNAL GOVERNMENT OF GOA AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. No. IT/24/2003

Shri Arun P. Patil,
Rep. by Goa Trade & Commercial
Workers Union,
Velho Building, 2nd Floor,
Panaji-Goa.

... Workman/Party I

V/s

M/s. Sai Metal Industry,
C/o. Mithil Chandrakant Tar (since deceased)
Shetyewado, Duler,
Mapusa-Goa.

... Employer/Party II

Workman/Party I - Represented by Adv. Shri Suhas Naik.

Employer/Party II - Represented by Adv. Smt. Shanti Fonseca.

Panaji, dated: 28-1-2004.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) the Government of Goa by order dated 24-4-2003 bearing No. 28/13/2003-LAB referred the following dispute for adjudication of this Tribunal.

"Whether the action of the management of M/s. Sai Metal Industry, Mapusa, Goa in terminating the services of Shri Arun P. Patil, Incharge, with effect from 1-3-2002 is legal and justified ?

3. If not, to what relief the workman is entitled to ?"

2. On receipt of the reference a case was registered under No. IT/24/2003 and registered A/D notice was issued to the parties. In pursuance to the said notice, the Workman-Party I (for short, "Workman") put in his appearance and thereafter filed his statement of claim at Exb. 3. The Employer-Party II (for short, "Employer") did not appear and participate in the proceedings though was duly served with the notice and therefore the case was proceeded ex parte against the employer on 12-9-2003. The case was thereafter fixed for filing affidavitory evidence of the workman on 6-10-2003. On this date Adv. S. Fonseca appeared on behalf of the employer and prayed for time to file the application for setting aside the ex-parte order. Accordingly, the case was adjourned and fixed on 15-10-2003 at 10.30 a.m. On this date Adv. Smt. Fonseca appeared and submitted that the Proprietor of the employer was dead. Adv. Shri Suhas Naik, representing the workman submitted that he will file the application for bringing the legal heirs of the deceased proprietor on record. Thereafter the case was fixed on 29-10-03 and 18-11-03 at the request of Adv. Suhas Naik but no application was filed and also none remained present on behalf of the workman on 18-11-03. On the said date Adv. S. Fonseca produced the death certificate of Shri Mithil Chandrakant Tar, the Proprietor of the employer and also filed an application disclosing names of his legal heirs. The case was adjourned to 2-12-03 for bringing the legal heirs of the deceased

proprietor of the employer on record, but the workman as well as the Advocate remained absent. The case was thereafter again adjourned to 17-12-03 giving last opportunity to the workman to bring the legal heirs of the deceased proprietor on record. However, again none appeared on behalf of the workman and consequently no application came to be filed for bringing the legal heirs of the deceased Proprietor Shri Mithil Chandrakant Tar on record. This being the case the workman has failed to bring on record the legal heirs of the deceased Proprietor of the Employer/Establishment in the above proceedings. Consequently there is no employer before this Tribunal in the above proceedings and as such the reference cannot be proceeded with.

3. Industrial Dispute envisages a dispute or difference between the workman and the employer. In the present case, in the circumstances stated above, there is no employer before this Tribunal and therefore no industrial dispute exists and consequently the reference does not survive. In the circumstances, I pass the following order.

ORDER

It is hereby held that the dispute between the workman Shri Arun P. Patil and the employer M/s. Sai Metal Industry does not exist and consequently the reference does not survive.

No order as to costs. Inform the Government accordingly.

Sd/-
(Ajit J. Agni),
Presiding Officer,
Industrial Tribunal.

Notification

No. 28/1/2004-LAB

The following Award passed by the Industrial Tribunal of Goa, at Panaji-Goa on 22-1-2004 in reference No. IT/51/2000 is hereby published as required by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

Vasanti H. Parvatkar, Under Secretary (Labour).

Panaji, 12th February, 2004.

IN THE INDUSTRIAL TRIBUNAL

GOVERNMENT OF GOA

AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. No. IT/51/2000

Shri Hari B. Sawant,
H. No. 10, Wadawal,
Assonora,
Bardez-Goa.

... Workman/Party I

V/s

M/s. Kadamba Transport
Corporation Ltd.,
Panaji-Goa.

... Employer/Party II

Workman/Party I - Represented by Adv. Shri A. Kundaikar.

Employer/Party II - Represented by Adv. Shri A. Palekar.

Dated: 22-1-2004.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) the Government of Goa by order dated 7-7-2000 bearing No. IRM/CON-MAP/(66)/99/3367 referred the following dispute for adjudication of this Tribunal.

- 1) Whether the action of M/s. Kadamba Transport Corporation Limited, Panaji-Goa in terminating the services of Shri Hari B. Sawant, Conductor, with effect from 12-6-96 is legal and justified ?
- 2) If not, to what relief the workman is entitled?

2. On receipt of the reference a case was registered under No. IT/51/2000 and registered A/D notice was issued to the parties. In pursuance to the said notice, the parties put in their appearance. The Workman/Party-I (for short, "workman") filed his statement of claim at Exb. 4. The facts of the case in brief as pleaded by the workman are that he was employed with the employer as Conductor w.e.f. 1-3-1993. That he was issued a chargesheet dated 26-9-94 alleging that when he was on route Panaji Sawantwadi via Patradevi on bus bearing No. GA-01-X 0106 on 8-9-94 he was checked by the line checking staff at Patradevi at 17.45 hrs. and it was found that 3 passengers were travelling without tickets and though the workman had collected the bus fare of Rs. 21/- from them had not issued tickets to them and also that an excess amount of Rs. 73/- was found with him in cash than the sale of tickets and further that the said amount was generated by not issuing the tickets to the passengers after collecting fare from them. That another chargesheet dated 23-6-95 was issued to the workman alleging that when he was on route Panaji Mapusa Hubli on vehicle No. GA-01-X-0090 on 17-6-95 the bus was checked by the line checking staff at Hubli at 20.10 hrs. and was found that the workman had collected bus fare of Rs. 175/- from six passengers travelling from Usgao-Tisk to Hubli and had issued tickets of Rs. 127/- only with the intention to misappropriate the revenue of the Corporation. It was further alleged that the workman collected bus fare of Rs. 117/- from 3 passengers travelling from Mapusa to Hubli and issued tickets of Rs. 12/- only; each ticket being of Rs. 4/-. It was also alleged that the excess amount of Rs. 335.25 was found with the workman and that the said amount was generated by way of non issue of tickets to the passengers after recovery of bus fare from them. That the workman replied to the said chargesheet denying the allegations made against him. That enquiry was

conducted into the said chargesheets and on receipt of the report of the enquiry officer the workman was terminated from service w.e.f. 12-6-96. The workman contended that the enquiry conducted against him was not fair and proper and also the findings that they are trying to arrive at an amicable settlement and therefore at the request of the parties the case was fixed on 9-1-94 for filing the terms of the settlement. Accordingly on this date the parties appeared and submitted that the dispute between them has been amicably settled and they filed the terms of the settlement dated 9-1-04 at Exb-10. The parties prayed that consent award be passed in terms of the said settlement. I have gone through the terms of the settlement and I am satisfied that the said terms are certainly in the interest of the workman. I therefore accept the submissions made by the parties and pass the consent award in terms of the settlement dated 9-1-04 Exb.-10.

ORDER

1. It is agreed between the parties that the workman concerned in the reference shall be appointed as Conductor on probation on initial pay of Rs. 3050/- in the pay scale of Rs. 3050-75-3950-80-4590/-.
2. It is agreed between the parties that, consequent upon appointment as per clause (1) above, the workman concerned shall forgo all the benefits and continuity in service.
3. It is agreed by the Workman/Party-I that, the claim raised in above reference stands conclusively settled and have no any claim of any monetary benefits which can be computed in terms of money or continuity in services.
4. It is agreed by the Employer/Party-II that the Workman/Party-I will be appointed as Conductor within 15 days from the date of filing these consent terms.

No order as to cost. Inform the Government accordingly.

Sd/-
(Ajit J. Agni),
Presiding Officer,
Industrial Tribunal.

Notification

No. 28/1/2004-LAB

The following Award passed by the Industrial Tribunal of Goa, at Panaji-Goa on 23-1-2004 in reference No. IT/34/99 is hereby published as required by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

Vasanti H. Parvatkar, Under Secretary (Labour).

Panaji, 12th February, 2004.

IN THE INDUSTRIAL TRIBUNAL
GOVERNMENT OF GOA

AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. No. IT/34/99

Shri Rajendra Chodankar,
Narvem, Madlawada,
Bicholim-Goa. ... Workman/Party I

V/s

M/s. Panjekar Printers,
Moira, Bardez-Goa. ... Employer/Party II

Workman/Party I - Represented by Adv. Shri Suhas Naik.

Employer/Party II - Represented by Adv. Shri R.P. Bhaip.

Dated: 23-1-2004.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947), the Government of Goa by order dated 12-4-1999 bearing No. IRM/CON/ /MAP/(24)/94/2113 referred the following dispute for adjudication of this Tribunal.

- 1) Whether the action of the management of M/s. Panjekar Printers, Moira, Bardez Goa in terminating the services of Shri Rajendra Chodankar, Printer, with effect from 16-5-1994 is legal and justified ?
- 2) If not, to what relief the workman is entitled?

2. On receipt of the reference a case was registered under No. IT/34/99 and registered A/D notice was issued to the parties. In pursuance to the said notice, the parties put in their appearance. The Workman/Party-I filed his statement of claim at Exb. 5. The facts of the case in brief as pleaded by the Workman/Party-I (for short "workman") are that he was employed with the Employer/Party-II (for short "employer") on 1-7-98 in the scale of Rs. 750/- p.m. as a Printer and he was issued a letter of appointment. That though the Printing Press of the employer was running in full profit, the employer failed to pay the salary of the workman from time to time. That on 15-5-92 when the workman demanded the payment of his salary the employer asked him to get out of the Printing Press. That when the workman insisted to pay to him all his dues the employer asked him to report at the office on 30-6-94 to collect his dues and when the workman went to the office on 30-6-94 the employer failed to pay his dues. That thereafter by letter dated 3-7-94 the workman raised an industrial dispute for illegal termination of his service and non payment of his legal dues before the Asst. Labour Commissioner (Mapusa). The Asst. Labour Commissioner sent a letter dated 10-8-94 to the employer in respect of the

termination of service of the workman. That the employer by letter dated 26-8-94 stated that the workman is absconding from work from 16-5-94 without any intimation and without leave. That the workman agreed before the Asst. Labour Commissioner on 26-8-94 to report for work but when he reported for work the same was refused by the employer. The workman stated that at the time of termination of his service the employer did not comply with the provisions of law as he was not given any notice nor he was given any legal compensation. The workman contended that termination of his service by the employer is illegal and unjustified and therefore he is entitled to reinstatement in service with full back wages.

3. The employer filed written statement at Exb. -6. The employer stated that the workman was mainly doing the work of printing. The employer stated that the attendance of the workman was not good and on many occasions he was verbally asked to improve his attendance but he failed to do so as a result of which the employer had to suffer in his business. The employer stated that the workman worked up to 15-5-94 and thereafter remained absent without any intimation and leave. The employer stated that since the workman was in the habit of remaining absent he waited for a reasonable time for the workman to attend to the work and after waiting for a long time he sent a letter dated 7-7-94 to the workman on his last known address asking the workman to report for work immediately. The employer stated that the said letter was returned back undelivered with the remark "not known return to sender". The employer stated that thereafter the workman prepared a back dated letter on 3-7-94 addressed to the Dy. Labour Commissioner, Mapusa. The Employer stated that in the said letter the workman did not raise the dispute as regards termination of his service but raised the grievances regarding non-payment of his dues. The employer stated that on receipt of the notice from the Asst. Labour Commissioner he filed the reply dated 26-8-94 clearly stating that the services of the workman were not terminated but he had remained absent from 16-5-94. The employer stated that since the services of the Party-I were not terminated nor employment was refused to him the dispute did not exist and the reference is liable to be dismissed. The employer stated that since the workman did not report for work from 16-5-94 the question of refusal of employment to him or giving him notice or giving him notice pay and compensation did not arise. The employer stated that the question of issuing chargesheet and conducting enquiry arises only when the employer desires to take action against the employee. The employer stated that the workman never reported for work and the employer did not take action against him for his absence so far. The employer denied that the workman is entitled to reinstatement in service with full back wages. The employer stated that from 1-10-94 the workman was in self employment and he has earned huge profit out of the said business. The employer stated that the workman is not entitled to any relief as claimed by him. The workman thereafter filed rejoinder at

Exb.-8. On the pleadings of the parties issues were framed at Exb.-9 and thereafter the case was fixed for recording the evidence of the workman. After recording the evidence of the workman, the case was fixed for recording the evidence of the employer. The employer filed his affidavitory evidence on 23-10-03 and thereafter the case was fixed for the cross examination of the employer Shri Ravindra Panjekar on 11-12-03. On this date the parties submitted that they are trying to arrive at an amicable settlement and accordingly at the request of the parties the case was fixed on 13-1-04 for filing of the terms of the settlement by the parties. Accordingly on this date the parties appeared and submitted that they have arrived at an amicable settlement and filed the terms of settlement dated 13-1-04 at Exb.-10. The parties prayed that consent award be passed in terms of the said settlement. I have gone through the terms of the settlement and I am satisfied that the said terms are certainly in the interest of the workman. I, therefore accept the submissions made by the parties and pass the consent award in terms of the settlement dated 13-1-04 Exb. 16.

ORDER

- a) It is hereby agreed between the parties that the workman Shri Rajendra Chodankar is legally relieved from his services with effect from 15-5-1994.
- b) It is agreed between the parties that the employer shall pay an amount of Rs. 20,000/- (Rupees twenty thousand only) to the workman towards full and final settlement of his legal dues which includes gratuity, notice pay and retrenchment compensation by post dated cheques in following manner:

Cheque No.	Date	Amount
1. 542091	30-1-04	5000-00
2. 542092	28-2-04	5000-00
3. 542093	31-3-04	5000-00
4. 542094	30-4-04	5000-00

- c) It is agreed between the parties that the workman Shri Rajendra Chodankar shall accept the above amount towards full and final settlement from the employer and the workman shall have no claim of whatsoever nature against the employer in future or any past claim.
- d) In view of the above the matter stands conclusively settled and workman agree that he has no claim of whatsoever against the employer M/s. Panjekar Printers represented by its Proprietor Shri Ravindra Panjekar.

No order as to cost. Inform the Government accordingly.

Sd/-
(Ajit J. Agni),
Presiding Officer,
Industrial Tribunal.

Notification

No. 28/1/2004-LAB

The following Awards Part I dated 15-1-2004 and Award Part-II dated 19-1-2004 passed by the Industrial Tribunal of Goa, at Panaji-Goa in reference No. IT/4/2001 is hereby published as required by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.
Vasanti H. Parvatkar, Under Secretary (Labour).

Panaji, 18th February, 2004.

IN THE INDUSTRIAL TRIBUNAL
GOVERNMENT OF GOA
AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. Case No. IT/4/2001

1. Shri Sarvesh G. Halamkar
2. Shri Uday Mardolker
3. Shri Kishor Naik
4. Ms. Dipa Naik
5. Ms. Kranti Walwalker,
Near Shri Ram Mandir,
Diwar-Goa 403 403. ... Workmen/Party I

V/s

M/s. Mahalsa Chem Pvt. Ltd.,
B-5, Madhukar Bldg.,
Alto Porvorim,
Bardez-Goa. ... Employer/Party II

Workman/Party-I except – M/s. Kranti Walwalker
— Represented by Adv. Shri Suhas Naik.

M/s. Kranti Walwalker - Absent.

Employer/Party II - Represented by Shri S.M. Singhbal.

Dated: 15-1-2004.

AWARD – PART I

In exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947), the Government of Goa by order dated 3-1-2001 bearing No. IRM/CON/ / (71)/2000/83 referred the following dispute for adjudication of this Tribunal.

- 1) Whether the action of management of M/s. Mahalsa Chem Pvt. Ltd., Kundaim Industrial Estate, Kundaim-Goa in terminating the services of Shri Sarvesh G. Halamkar, Shri Uday Mardolker, Shri Kishor Naik, Ms. Dipa Naik and Ms. Kranti Walwalker, with effect from 23-3-2000, on the grounds of closure of the establishment, is legal and justified ?
- 2) Whether the management's action in terminating the services of the above 5 workmen without

paying them the legal dues as may be due, is legal and justified?

3) What relief, if any, the workmen are entitled to?

2. On receipt of the reference a case was registered under No. IT/4/2001 and registered A/D notice was issued to the parties. In pursuance to the said notice the Workmen/Party-I Shri Sarvesh Halamkar, Shri Uday Mardolker, Shri Kishor Naik and Ms. Dipa Naik (for short "workman") put in their appearance and they were represented by Adv. Shri Suhas Naik. The workmen filed their statement of claim at Exb.-3 in support of their contention that the termination of their service by the Employer/Party-II (for short "employer") w.e.f. 23-3-2000 is illegal and unjustified. The employer though was duly served with the notice did not appear and therefore the case was proceeded ex-parte against the employer on 26-11-2001. Subsequently the employer also put in its appearance and filed an application for setting aside the ex-parte order and after hearing the parties the ex-parte order dated 26-11-2001 was set aside by order dated 24-3-2003. The employer thereafter filed written statement at Exb.-6 resisting the claim of the workman.

3. After the written statement was filed by the employer the case was fixed for filing of the rejoinder by the workmen to the written statement. However the workmen and the employer submitted that they are trying to arrive at an amicable settlement and therefore at their request the case was fixed on 27-11-03 for filing the terms of settlement. Accordingly on this date the workmen and the employer appeared and they filed the terms of settlement dated 27-11-03 at Exb. 7. The workmen and the employer prayed that consent award be passed in terms of the said settlement. I have gone through the terms of the said settlement and I am satisfied that the said terms are certainly in the interest of the workmen. I therefore accept the submissions made by the parties and pass the consent award in terms of the settlement dated 27-11-03 Exb. 7.

ORDER

1. It is agreed between the parties that the services of all the workmen namely (1) Sarvesh Halamkar (2) Kishor Naik (3) Uday Mardolker and (4) Deepa Naik stands to be retrenchment w.e.f. 22-03-2000 i.e. on account of the closure of the establishment of the Management of Mahalasa Chem Pvt. Ltd., Kundaim-Goa.
2. It is agreed between the parties that all the four above named workmen shall be paid an amount as shown hereunder forwards their legal dues. Accordingly, Deepa Naik shall be paid an amount of Rs. 9543.00, Uday Mardolker-Rs. 12,508.00, Sarvesh Halamkar-Rs. 21,538.00 and Kishor Naik – Rs. 8,736.00. The above named amounts was calculated by the management at the time of retrenchment of their services.

3. It is agreed between the parties that in addition to the above amount shown in Clause-2 of this settlement, the Management agrees to pay an additional amount of Rs. 5,000/- (Rupees five thousand only) each as ex-gratia amount to all the workmen towards full and final settlement.

4. It is agreed between the parties that the amount shown in Clause-2 above, and the amount Rs. 5000/- (Rupees five thousand only) towards ex-gratia shown in Clause-3 shall be paid to all the workmen on or before 15-12-2003 by a post dated cheque drawn in favour of each of the applicants/workmen. Accordingly Miss Deepa Naik shall be paid an amount of Rs. 9,543/- + Rs. 5000/- by cheque No. 0277292 dated 15-12-2003 drawn on Goa Urban Co-operative Bank, Uday Mardolker shall be paid an amount of Rs. 12,508/- + 5000/- by cheque No. 0277293 dated 15-12-2003 drawn on Goa Urban Co-op. Bank, Sarvesh Halarnkar shall be paid an amount of Rs. 21,538/- + 5000/- by cheque No. 0277291, dated 15-12-2003 drawn on Goa Urban Co-op. Bank, Kishor Naik shall be paid an amount of Rs. 8,736/- + 5000/- by cheque No. 0277294 dated 15-12-2003 drawn on Urban Co-op. Bank. It is agreed between the parties that in view of the above settlement the case No. LCC/40/2001 and IT/4/2001 stands settled and the parties pray that consent award be passed in the case No. IT/4/2001.

5. It is agreed between the parties that the amount paid to the applicants/workmen as per Clause-3 and Clause-4 shall be towards full and final settlement and satisfaction of all the claims and the applicants/workmen declare that they have no claim against the Opponent/Management. All claims and disputes intense between the parties stands settled for all legal purposes.

No order as to cost. Inform the Government accordingly.

Sd/-
(Ajit J. Agni),
Presiding Officer,
Industrial Tribunal.

IN THE INDUSTRIAL TRIBUNAL
GOVERNMENT OF GOA
AT PANAJI

Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. Case No. IT/4/2001

Shri Sarvesh G. Halarnekar
Shri Uday Mardolker
Shri Kishor Naik
Ms. Dipa Naik
Ms. Kranti Walwalker,
Near Shri Ram Mandir,
Dilwar-Goa 403 403.

... Workmen/Party I

V/s

M/s. Mahalsa Chem Pvt. Ltd.,
B-5, Madhukar Bldg.,
Alto Porvorim,
Bardez-Goa.

... Employer/Party II

Workmen/Party-I except Ms. Kranti Walwalker
Represented by Adv. Shri Suhas Naik.

Ms. Kranti Walwalker - Absent.

Employer/Party II - Represented by Shri S.M. Singhbal.

Dated: 19-1-2004.

AWARD - PART-II

In exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) the Government of Goa by order dated 3-1-2001 bearing No. IRM/CON/(71)/2000/83 referred the following dispute for adjudication of this Tribunal.

- 1) Whether the action of the management of M/s. Mahalsa Chem Pvt. Ltd., Kundaim Industrial Estate, Kundaim-Goa, in terminating the services of Shri Sarvesh G. Halarnekar, Shri Uday Mardolker, Shri Kishor Naik, Ms. Dipa Naik and Ms. Kranti Walwalker, with effect from 23-3-2000, on the grounds of closure of the establishment, is legal and justified?
- 2) Whether the management's action in terminating the services of the above 5 workmen without paying them the legal dues as may be due, is legal and justified?
- 3) What relief, if any, the workmen are entitled to?

2. On receipt of the reference a case was registered under No. IT/4/2001 and registered A/D notice was issued to the parties who were duly served with the said notice. The workmen Shri Sarvesh Halarnekar, Shri Uday Mardolker, Shri Kishor Naik and Ms. Dipa Naik (for short "workman") put in their appearance and they filed their claim statement at Exb. 3. The workman Ms. Kranti Walwalker however did not appear nor statement of claim was filed on her behalf. The case was proceeded with and after the Employer/Party-II (for short "employer") filed the written statement the above workmen and the employer settled their dispute and they filed their terms of the settlement dated 27-11-03 at Exb. 7 and prayed that consent award be passed. Accordingly consent award i.e. Award Part-I was passed on 15-1-2004 in terms of such consent terms and the case was further proceeded with as regards the workman Ms. Kranti Walwalker.

3. Since no written statement was filed by the employer in relation to the workman Ms. Kranti Walwalker the case was fixed for filing of the written statement by the employer on 12-12-03. On this date Adv. Shri S.M. Singhbal appeared on behalf of the employer and submitted that the workman Ms. Kranti Walwalker had also settled her dispute with the

employer in June, 2000 and as per the said settlement a D.D. for Rs. 4,440/- was sent to her in accordance with the full and final settlement dated 28-6-2000, by registered post. He filed an application to that effect and produced the xerox copy of the full and final settlement dated 28-6-2000, the xerox copy of the D.D. dated 28-6-2000 for Rs. 4,440/- drawn in favour of Ms. Kranti Walwalker and the xerox copy of the A.D. card showing that the said D.D. and the letter of full and final settlement was received by Ms. Kranti Walwalker. Though Ms. Kranti Walwalker was duly served with the notice in the present proceedings, she did not put in appearance and did not participate in the proceedings. The documents produced by the employer prove that the dispute between the workman Ms. Kranti Walwalker and the employer was duly settled much before the dispute was referred by the Government to this Tribunal by order dated 3-1-2001. Therefore in view of the settlement of the dispute between the workman Ms. Kranti Walwalker and the employer, the dispute does not exist and consequently the reference does not survive.

In the circumstances I pass the following order.

ORDER

It is hereby held that the dispute between the workman Ms. Kranti Walwalker and the employer M/s. Mahalsa Chem Pvt. Ltd., Kundaim Industrial Estate, Kundaim-Goa does not exist in view of the settlement of the dispute and consequently the reference does not survive.

No order as to cost. Inform the Government accordingly.

Sd/-
(Ajit J. Agni),
Presiding Officer,
Industrial Tribunal

Notification

No. 28/1/2004-LAB

The following Award passed by the Industrial Tribunal of Goa, at Panaji-Goa on 9-2-2004 in reference No. IT/58/90 is hereby published as required by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.
Vasanti H. Parvatkar, Under Secretary (Labour).
Panaji, 19th February, 2004.

IN THE INDUSTRIAL TRIBUNAL
GOVERNMENT OF GOA

AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. No. IT/58/90

Shri Rajasab Bagwan,
Rep. by The General Secretary,
All Goa General Employees Union,
P. O. Box No. 90,
Vasco-da-Gama, Goa. ... Workman/Party I

V/s

M/s. New Era Handling Agency,
Salkar Building, 1st Floor,
Near Auto Service,
Vasco-da-Gama, Goa. ... Employer/Party II

Workman/Party I - Represented by Adv. Shri P. H. Sawant.

Party II - Represented by Shri G. K. Sardessai.

Dated: 9-2-2004.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947), the Government of Goa by order dated 4-12-1990 bearing No. 28/65/90-LAB referred the following dispute for adjudication of this Tribunal.

"Whether the action of the management of M/s. New Era Handling Agency, Vasco, in terminating the services of Shri Rajasab Bagawan, Loader, with effect from 23-3-1990 is legal and justified ?

If not, to what relief the workman is entitled ?"

2. On receipt of the reference a case was registered under No. IT/58/90 and registered A/D notice was issued to the parties. In pursuance to the said notice the parties put in their appearance. The Workman-Party I (for short, "Union") filed statement of claim at Exb. 8. The facts of the case in brief pleaded by the union are that the Employer-Party II (for short "employer") is a contractor to M/s. Zuari Agro Chemicals Ltd., who is having its fertiliser factory, in respect of contracts for bagging and dispatching of fertilisers produced in the factory. That the workman Shri Rajasab Bagawan (for short, "workman") was employed as a loader by the employer from 1-1-1978. That in the month of February, 1978 the workman met with an accident arising out of and in the course of employment in the factory as a result of which he suffered extensive injuries to his back bone and spine. That he was admitted in the Government Cottage Hospital at Chicalim and thereafter he was shifted to Goa Medical Collage at Panaji. That after being discharged he remained under continuous medical treatment as an out patient and the said treatment continued till date for mechanical low back pain with Lumber Canal Stenosis arising due to Osteoarthritis of lumber spine. That under medical advice he has been permitted to perform only those duties which are of a light and non-strenuous nature which he started performing after rejoining the duties. That in February, 1999 all the workmen employed by the

employer joined All Goa General Employees Union and the workman was instrumental in playing role in all the union activities. That on 20-3-90 the workman was suddenly asked to do the job of wagon loading at the railway siding and since the said work involved lifting and carrying of heavy bags he expressed his inability to carryout the said work in view of his physical condition but the employer persisted in assigning the said work of wagon loading to him. That though the workman was unable to perform the said work he continued to remain present at the place of employment till the normal working hours of the 2nd shift in which he was working. That though the workman showed willingness to perform any other light and non-strenuous duty that may be assigned to him the employer persisted in their illegal and malafide action to victimise him. That there was a similar case of Shri Lingappa Vassappa who was also assigned the duty of wagon loading though he was unable to do the same due to his physical condition. That the union by letter dated 22-3-90 protested against the employer's action viz a viz the work of Shri Lingappa Vassappa but instead of giving light duties the employer took back their attendance cards and told them not to report for duty. That the union raised the dispute of the workman and of said Lingappa Vassappa and since said Lingappa Vassappa was taken back, his dispute stood settled, but no settlement could be arrived at in the conciliation proceedings as regards the workman and hence failure was recorded. The union contended that the abrupt action of the employer in refusing to give employment to the workman w.e.f. 23-3-90 is illegal, unjust and unlawful and amounts to unfair labour practice. The Union claimed that the workman is entitled to reinstatement in service with full back wages and other benefits. The Union also claimed that the workman is entitled to the service condition that he shall be assigned only light and non strenuous duties as long as his physical infirmity continues.

3. The employer filed written statement at Exb. 9. The employer admitted that they are engaged as contractors by M/s. Zuari Agro Chemicals Ltd., at their Fertilizer Production Plant at Zuarinagar for the work of bagging and despatching fertilizers. The employer stated that the workman was employed by them initially on casual basis and thereafter on permanent basis as a loader. The employer stated that most of the workmen are the members of the National Commercial Employees Sangh or Goa Trade & Commercial Workers Union except one or two workmen including the workman in the present reference who are the members of All Goa General Employees Union. The employer stated that as per the settlement dated 30-9-86 signed between them and the National Commercial Employees Sangh in the conciliation proceedings u/s 12(3) of the Industrial Disputes Act, 1947 the workman has been classified in the category of loader and he was doing the work of loader till 16th March, 1990. The employer stated that on 16th March, 1990 the workman refused to perform the loading work stating that he may be given light work and therefore a show cause notice was issued to him

which he refused to accept. The employer stated that the above fact was brought to the notice of the union who wrote back stating that the workman was being instructed to carryout his work as a loader but the workman continued to disobey the orders of performing the work of a loader. The employer admitted that letter dated 22nd March, 1990 was received from the union requesting that the workman and the other workman Shri Lingappa Vassappa should be given light work on the ground that they were doing light nature of duties earlier which fact was not correct. The employer stated that they could not agree to this request of the union because, (1) giving light work to the workman who was engaged as a loader would amount to change in conditions of employment; (2) it would amount to breach of settlement dated 30 September, 1986 which was still in force and (3) it would lead to industrial unrest amongst workman. The employer stated that the workman went on persisting with his illegal demand and to give the demand a look of industrial dispute, he went on saying that the employer had refused employment to him when in fact the employer had never refused employment to him. The employer stated that they have neither terminated his services nor refused employment to him in the category of a loader nor there is intention of termination of his services as a loader and as such the order of reference is liable to be set aside as no dispute existed on the date when the reference was made to the Tribunal. The employer stated that the union who has raised the dispute on behalf of the workman has no membership amongst the workmen of the employer and as such no dispute pertaining to the terms of employment of a single individual workman becomes an industrial dispute in terms of Sec. 2(s) of the Industrial Disputes Act, 1947 and this Tribunal has no jurisdiction to decide the reference. The employer denied for want of knowledge that the workman suffered accident or that he underwent treatment in the hospital. The employer stated that the workman continued to be employed as a loader and at no stage he was officially allotted light work. The employer stated that the workman was refusing to carryout the orders and continued to sit idle without doing the routine work and thereafter from 20-3-90 he remained absent from work place. The employer stated that there is no question of reinstating the workman in service as his services were not terminated nor there is question of assigning light duties to him as it is not the subject matter of the present dispute. The Union thereafter filed rejoinder at Exb. 10.

4. On the pleadings of the parties, following issues were framed.

1. Whether the Party I/Workman proves that the dispute raised by him is an industrial dispute ?
2. Does the Party I/Workman prove that after he met with an accident he was given light and non-strenuous duties by the contractor as alleged ?
3. If yes, does Party I/Workman prove that his services were illegally terminated without holding any enquiry by the Party II ?

4. If yes, is Party I/Workman entitled to any relief?

5. What Award or Order?

5. The issue No. 1 was treated as preliminary issue and the parties led evidence on the said issue. Thereafter arguments were heard on the said issue. At the time when the case was fixed for order on issue No. 1, it was found that issue No. 1 was wrongly framed by my learned Predecessor as the burden was cast on the Workman/Union to prove that the dispute referred is an industrial dispute when infact the burden ought to have been cast on the employer to prove that the dispute referred is not an industrial dispute as the employer wanted to oust the jurisdiction of this Tribunal by raising the said plea. Accordingly, order dated 8-8-96 was passed recasting the issue No. 1 thereby casting the burden on the employer to prove that the dispute referred is not an industrial dispute. The issue No. 1 which was recast is as follows.

Issue No. 1: whether the Party II proves that the dispute referred is not an industrial dispute and hence the reference is bad?

It was further mentioned in the said order that the issue No. 1 shall be decided together with the other issues and the parties were directed to lead evidence on the other issues. It was also mentioned that the evidence recorded on issue No. 1 shall be considered while deciding the issue together and that the parties will be entitled to lead further evidence on the issue No. 1 in view of its recasting.

6. My findings on the issues are as follows:

Issue No. 1: In the negative.

Issue No. 2: In the negative.

Issue No. 3: In the negative.

Issue No. 4: In the negative.

Issue No. 5: As per order below.

REASONS

7. *Issue No. 1:* It is the contention of the employer that the dispute referred by the Government is not an industrial dispute because it does not fall within the provisions of Sec. 2A of the Industrial Disputes Act, 1947. It is the contention of the employer that the dispute raised by the workman is not an individual dispute but it is a collective dispute as the dispute raised is in the matter of altering conditions of service and does not fall under Sec. 2A. I do not agree with this contention of the employer. Sec. 2A of the Industrial Disputes Act, 1947 reads as follows:

2A: "Where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal or termination shall be deemed to be an industrial dispute notwithstanding that no other

workman nor any union of workmen is a party to the dispute."

Thus as per Sec. 2A of the Act, certain individual dispute is treated as industrial dispute even though the other workmen or the union have no interest in the said dispute or they are not party to the said dispute. The dispute regarding termination of service of a workman falls within the provisions of Sec. 2A of the Industrial Disputes Act, 1947, and it is an industrial dispute.

8. In the present case it is the contention of the employer that the dispute which is raised is regarding alteration of the service conditions of the workman and therefore it does not fall under Sec. 2A. There is no substance in this contention of the employer. From the schedule of the order of reference dated 4-12-1990 itself it can be seen that the dispute referred for adjudication is regarding the termination of the service of the workman by the employer from 23-3-90. It is therefore obvious that the workman had raised the dispute before the conciliation officer that his services are illegally terminated by the employer. The employer may deny that the services of the workman were terminated. The reference of the dispute is made on the basis of the allegations made by the workman. The burden was on the employer to prove that the dispute raised is not regarding termination of the service but regarding alteration in service conditions. The employer could have called for the conciliation file to prove that the dispute was raised regarding alteration in service conditions. However the employer did not do so. On the contrary there is sufficient evidence on record which shows that the dispute which was raised on behalf of workman was regarding termination of his service and not alteration in his service conditions. The Union's witness Shri Joaquim Rodrigues has produced the notice dated 24-3-90 Exb. 23 sent by the union to the employer on behalf of the workman. In the said notice it is clearly mentioned that the attendance card of the workman was taken away and he was asked not to report for duty. In the said notice demand was made on the employer that the attendance card should be given back to the workman, and he should be put back to work. There is also another document namely the minutes of the meeting dated 21-6-90 Exb. 29. These minutes were produced by the employer in the course of the cross examination of the union's witness Shri Joaquim Rodrigues. These minutes also show that in the conciliation proceedings it was the contention of the union that employment was referred to the workman by the employer by stopping him from working from 23-3-90 and the demand was for reinstating him in service. The above evidence therefore clearly shows that the dispute which was raised by the union on behalf of the workman was as regards termination of his service by the employer from 23-3-90 and not regarding alteration of his service conditions. This being the case, the dispute is covered under Sec. 2A of the Industrial Disputes Act, 1947 and it is an industrial dispute as contemplated under Sec. 2A of the Industrial Disputes

Act, 1947. I, therefore hold that employer has failed to prove that the dispute referred is not an industrial dispute. Hence, I answer the issue No. 1 to the negative.

9. *Issue No. 2:* The Union has examined four witnesses namely its Asst. Secretary Shri F. X. Rodrigues, the workman Shri Rajasab, Shri Vithalappa and Dr. Carlos Barreto. The employer has examined its Managing Partner Shri Atul Jadhav. The employment of the workman with employer is not disputed. The workman himself in his deposition has stated in his deposition that initially he was working as a loader and that after he met with an accident in the course of his duties he started doing the work of sweeping. The employer's witness Shri Atul Jadhav has admitted in his deposition that the workman was working as a loader. He however stated that the workman was not given light work at any time. In the course of the cross examination of the workman the employer denied that the workman met with an accident in the course of his duty or that he met with an accident. It was denied that the medical certificate dated 26-3-92 Exb. 59 produced by him was in connection with the injury caused to him in the course of the employment or while he was in employment. It was also denied that he was given the work of a sweeper. The workman in his deposition stated that he met with an accident on 20-1-1978 while he was working at night and that at that time the Contractor was one Mr. C. N. Pereira. He has stated that when he was lifting one bag another bag fell on his back, and that he was taken to the hospital at Chicalim and thereafter was removed to Goa Medical College Hospital. He has stated that he remained as an indoor patient for 10 days. The statement of the workman that he met with an accident on 20-01-1978 while working and that he was taken to the hospital at Chicalim and then to GMC hospital is corroborated by the witness Shri Vithalappa. This witness was also working in the bagging section since the year 1973. He has stated that he knows the workman since 1978 and he was also working with him in the bagging section. In the cross examination of the workman as well as in the cross examination of the witness Shri Vithalappa it was not denied that the workman met with an accident on 20-1-78 while working and also that he was taken to the hospital at Chicalim and then to GMC.

Suggestions to this effect were put to the workman in his cross examination only when his second deposition was recorded and he was cross examined on 12-10-99. The second statement of the Union's witnesses and that of the employer's witness was recorded in view of the order of this Tribunal dated 8-8-96 whereby issue No. 1 framed earlier was recast putting the burden on the employer to prove that the dispute referred is not an industrial dispute and also the issue No. 1 was ordered to be decided alongwith other issues and the parties were directed to lead evidence on other issues and were permitted to lead further evidence on the issue No. 1 in view of the recasting of the said issue. The employer has not led any evidence to show that no accident had occurred to the workman on 20-1-78 while he was

working. However no evidence has been produced by the union or by the workman to prove the nature of the injuries suffered by him on account of the accident. The workman in his deposition recorded on 16-6-92 had stated that he will produce the medical certificates showing the nature of the injury sustained by him. But no such medical certificate was produced. There is no evidence from the union or from the workman as regards the nature of the injuries suffered by the workman on account of the accident on 20-1-78 and that on account of the said injuries the workman was unable to do the work of a loader or that he was advised by the doctor that he should not do any hard work. The workman in his deposition has stated that he was given the work of sweeping and collecting speed materials in the bags after he met with the accident and that he continued to do that work till the year 1989. The union's witness Shri Vithalappa has stated in his deposition that when the workman resumed duties after the accident he requested for light work and the light work was given to him by Mr. Diniz who was working as Foreman with the earlier contractor. It is pertinent to note that the witness Mr. Vithalappa did not state that the workman was doing the work of sweeping and collecting speed materials in the bag. He did not state the nature of the light work given to the workman. Since Mr. Vithalappa knew the workman, and according to him the Foreman had given light work to the workman. He would have definitely stated that the workman was given the light work of sweeping and collecting of speed materials in the bag if such work was given to him. The witness did not specify what type of the light work was given to the workman. According to the workman he continued to do the above said work till the year 1989. However, the evidence of the witness Mr. Vithalappa disproves this contention of the workman. He has clearly stated in his deposition that the contractor Mr. Jadhav refused to give light work to the workman and that since the workman was unable to do the loading work he and the other persons contracted the Union leader Mr. Pednekar who also instructed the workman to do the loading work. This clearly shows that after the accident the workman was capable of doing the loading work as otherwise the union leader would not have instructed the workman to do the loading work. There is also absolutely no documentary evidence from the union to prove that after the accident, the workman was given light work of sweeping and collecting speed materials in the bag. The union has produced the Incentive Paysheets for the months of October 1989, November, 1989, December, 1989 and January, 1990, at Exb. 56 colly. These paysheets do not show that the workman was doing the work of a sweeper and not loader. On the contrary these paysheets show that the workman was being paid loading incentive as the column No. 6 of the said pay sheets carry the title "loading inct". The union never challenged the said paysheets. The union's witness Shri Francisco Rodrigues has made contradictory statements in his deposition recorded on 21-11-97. In this examination in chief at one stage he made the statement that the Party II had not given to them the inspection of

incentive paysheets when they had gone to inspect the records whereas at another stage he made the statement that when they had inspected the records pertaining to incentive Pay sheets and it was found that the Party II was maintaining separate payment incentive records, one in respect of loaders and the other in respect of sweepers and that the name of the workman was figuring in the records of incentive payment pertaining to sweepers. However in his cross examination he stated that there are no separate records in respect of incentive payment as mentioned by him in his examination in chief. Therefore the paysheets Exb. 56 colly are liable to be accepted wherein the name of the workman figures and he is shown to have been paid loading incentive and not sweeping incentive. The union has produced the noting at Exb. 57. The union's witness Shri Francisco Rodrigues stated in his deposition that the Party II maintains the log books which show the type of the work done by each employee. He stated that he had seen the log books for the period from 1986 to 1990 in the office of the employer and at that time he was accompanied by Adv. P H Sawant, Shri S. K. Pandey and Sitaram Manzrekar. He stated that they noted down about 4 to 5 entries for each year from the said log books, and that the said entries showed that the workman was doing the work of sweeping or cleaning. He stated that after the inspection was carried out Shri Gad the Officer of the employer was asked to give the xerox copies of the log books which they had inspected but they were not given the copies. He stated that on the same day a letter was made asking to give the xerox copies of the log book and that by reply dated 5-12-92 it was informed that the document could not be taken out from the office without instructions from his superiors. He produced the said reply at Exb. 55. In his cross examination he denied the suggestion that the log books were not shown to them because they were destroyed. There is no corroborative evidence to prove that the log books were inspected by the witness and others namely Adv. Shri P. H. Sawant, Shri S. K. Pandey and Shri Sitaram Manzrekar in the office of the employer. Neither Adv. P. H. Sawant nor Shri S. K. Pandey nor Shri Sitaram Manzrekar have been examined by the union. The reply dated 5-12-92 given by Mr. Gad to Advocate Shri D.Y. Sawant on behalf of the opponent, produced at Exb. 55 does not mention as to the xerox copies of which documents the union wanted to obtain. The Union's witness Shri Rodrigues has admitted in his cross examination that reply dated 5-12-92 Exb. 55 does not specifically refer to log books. The said reply was in answer to the letter dated 30-11-92 of Adv. Shri D. Y. Sawant. The said letter would have shown if the union had requested for the xerox copies of the log books. The Union could have produced the copy of the said letter but it was not done. Therefore there is absolutely no evidence to show that the log books for the period 1986 to 1990 were examined by Shri Rodrigues and three others in the office of the employer in November, 1992 and that noting Exb. 57 was taken from the said log books. Shri Rodrigues in his cross examination stated that the entries on Exb. 57 were noted down by Adv. P.

H. Sawant. The employer did not admit the said entries and suggested that they are false and fabricated entries, and they are subsequently prepared to support the case of the workman. Since according to Shri Rodrigues the entries were noted down by Adv. Shri P. H. Sawant from the log books, and the employer had not admitted the said entries, the union ought to have examined Adv. Shri P.H. Sawant to prove the said entries. However, the union did not do so. In the circumstances the noting Exb. 57 cannot be relied upon and accepted. Therefore there is absolutely no evidence to show that after the workman met with an accident on 20-1-1978 he was given the work of sweeping and collecting speed material in the bags. In the circumstances, I hold that the Union/Workman has totally failed to prove that after the workman met with an accident he was given light and non-strenuous duty by the employer. Hence, I answer the issue No. 2 in the negative.

10. Issue No. 3: The contention of the Union is that the services of the workman were illegally terminated by the employer from 23-3-90 without holding any enquiry and therefore he is entitled to reinstatement in service with full back wages. The contention of the employer is that the services of the workman were never terminated but he himself stopped doing the work of loading in March, 1990. In the present case admittedly there is no termination letter to prove that the services of the workman were terminated from 23-3-90. The workman has admitted that he was employed as a loader and he was working in the bagging section. While deciding the issue No. 2 it has been held by me that the workman had met with an accident on 20-1-78 while on duty. It has been also held by me that the union has failed to prove the nature of the injuries suffered by the workman as a result of the accident. It has been further held by me that the union has failed to prove that the workman was given light and non strenuous duties that of sweeping and collecting speed materials in the bags, after the accident. The union has examined Dr. Carlos Barreto, who is working in the Goa Medical College Hospital in the Orthopaedic Department. He stated that the workman was under his treatment an outdoor patient for two years for low back pain due to lumbar spinal canal stenosis. He confirmed that the certificates dated 26-3-92 Exb. 59 and 8-2-90 Exb. 66. He has stated that as per both the certificates the workman was suffering from sickness. He stated that a person who is suffering from low back pain with lumbar canal stenosis cannot carry weight on his head or back but he can perform light duties. Nothing has been brought out to doubt the said certificates issued by Dr. Carlos Barreto. These certificates at the most prove that in February, 1990 the workman was suffering from lower back pain with lumbar canal stenosis due to which he was not able to carry weight on his head or back. The evidence of Dr. Carlos does not prove that the workman was suffering from the above sickness due to meeting with the accident on 20-1-78. Dr. Carlos has not deposed anything nor has produced any record regarding the injury or sickness suffered by the workman prior to

February, 1990. There is no evidence to prove that the workman was suffering from the above sickness prior to February, 1990. There is a letter dated 16th March, 1990 Exb. 33 written by the employer to the President of the National Commercial and General Employees Sangh. In this letter the employer has informed to the said union that the workman has refused to do the loading work from that day, and the said union was requested to advise the workman that he should work as a loader. This letter was produced by the employer. The employer has produced the reply of the said union dated 18-3-90 at Exb. 34. In this reply the said union informed the employer that the workman is instructed to carry out his work as a loader. In this reply the said union did not state that the workman has been doing the light work of a sweeper for the past several years or that he has been advised by the Doctor only to do the light work. The employer has also produced a notice dated 20th March, 1990 Exb. 35 addressed to the workman. In this notice it is mentioned that the workman reports for duties but sits idle without doing any work though he is repeatedly told by the supervisors to perform his normal loading work. The employer's witness Shri Atul Jadhav stated that the workman refused to accept the said notice. There is endorsement to this effect on the said notice. This fact is not denied by the union in the evidence of the said witness. The employer has also produced a letter dated 20th March, 1990 Exb. 36 addressed to the President of the above said union namely National Commercial & General Employees Sangh mentioning there in that the workman is not prepared to do any loading work and that he is insisting that he should be given any other light work. It is also mentioned in the said letter that no reasons have been given by the workman for changing the nature of his duties. It is further mentioned in the said letter if there is no objection from the Union/Workmen for any other co-worker carrying out the work allotted to the workman, the management may be able to accommodate the workman in category of the worker who is prepared to do his loading work. The reply dated 21st March, 1990 of the said union is at Exb. 37. In the said reply the said union has stated that the co-workers have strong objection to do any change in the designation or work allotted to the workman and the employer was asked not to make change in designation/nature of work of the workman without prior approval or consent of the said union and local committee. In the said reply the said union did not state that the workman was already doing the work of a sweeper and not of a loader. The above correspondence and mainly the replies of the union namely National Commercial and General Employees Sangh dated 18-3-90 Exb. 34 and 21st March, 1990 Exb. 37 shows that the workman was doing the work of a loader and the other co-workers had objection to give to the workman any other work than that of a loader. The Union's witness Shri Francis Rodrigues has admitted in his cross examination recorded on 19-5-92 that workers working in the bagging section were the members of two unions namely National Commercial and General Workers Sangh and Goa Trade and Commercial Workers

Union, and that the workman was the member of the Sangh and he approached him on 21-3-90. The union has produced the receipt dated 22-3-90 at Exb. 26, issued by it that is by All Goa General Employees Union towards the receipt of the membership fee from the workman. As per this receipt the workman had become the member of the union on 22-3-90. The workman also in his cross examination recorded on 17-6-92 admitted that he became the member of the CITU on 22-3-90. The above evidence therefore proves that till 21-3-90 the workman was represented by the other union namely the National Commercial and General Workers Sangh with whom the employer had entered into above correspondence. From the above it is evident that the workman joined the union, that is, All Goa General Employees Union on 22-3-90 only because the other union namely the National Commercial and General Workers Sangh did not succeed in getting him allotted light work instead of the work of a loader. In the letter dated 22-3-90 Exb. 27 written by the Union to the employer, it was stated that the workman was allotted light duties since 1978 because of the injuries and request was made that the practice of giving light work should be continued. The employer had replied to the said letter by reply dated 23 March, 1990 Exb. 28. In this letter the employer had denied that the workman was being given light work in the past and the union was asked to advise the workman to do his work of loading. The union has produced the minutes of the meeting dated 21-6-90 held by the Dy. Labour Commissioner, Margao. These minutes do not show that the employer admitted that the services of the workman were terminated with effect from 23-3-90. In the conciliation proceedings also the employer had taken the stand that the workman was refusing to do the loading job and the contention of the employer was that he cannot be given another job. It was not the case of the employer that because the workman was refusing to the work of loading his services were terminated with effect from 23-3-90. The reply dated 23rd March, 1990 Exb. 28 of the employer was produced by union's witness Shri F. X. Rodrigues, and this reply was admitted by the said witness. It is difficult to believe that the employer would terminate the services of the workman or refuse employment to him on 23rd March, 1990 itself when on the same date the employer had written to the union that the workman should be advised to do his work of loading. The said witness also admitted in his cross that the employer had informed that the workman and another workman by name Lingappa had stopped doing the work of loader which they were doing. The said witness Mr. Rodrigues also admitted that the workman as well as the worker Mr. Lingappa had the same grievance about the light duties. There is absolutely no evidence from the union that the employer terminated the services of the workman from 23-3-90. The union's witness Shri Rodrigues has himself admitted in his evidence that the grievance of the workman and that of the other worker Mr. Lingappa was about the light duties which means that their grievance was not that they have been refused employment or that their services have been terminated. The said witness has

further admitted in his cross examination that Mr. Lingappa started doing the work and there was no dispute. The evidence which is discussed above therefore shows that there was no termination of service or refusal of employment to the workman by the employer from 23-3-90 but the workman was not willing to do the work of loading on the ground of his sickness. The employer way back on 16th March, 1990 (Exb. 33) had informed the other union namely the National Commercial & General Employees Sangh, of which the workman was the member, that the workman had refused to do the loading work from that day. The employer by letter dated 20th March, 1990 Exb. 35 had also informed the workman that the workman was reporting for duties but was sitting idle without doing any work and that he had refused to carryout his normal duties for which he was employed that is, loading work. Considering the evidence discussed above, I hold that the services of the workman were not terminated but he himself had stopped carrying out the work of loading and was demanding that he should be allotted light duties. It according to the workman he was entitled to the allotted of light duties and not the duties of a loader, he ought to have raised a dispute in that respect. In the circumstances, I hold that the union has failed to prove that the services of the workman were illegally terminated by the employer w.e.f. 23-3-90 without holding any enquiry. I therefore answer the issue No. 3 in the negative.

11. Issue No. 4: This issue pertains to the relief if any to which the workman is entitled to. The question of granting relief to the workman would have arisen if it was held that the services of the workman were illegally terminated by the employer. While deciding the issue No. 3 it has been held by me that the union has failed to prove that the employer illegally terminated the services of the workman. In the circumstances, the workman is not entitled to any relief. I therefore answer the issue No. 4 in he negative.

Hence, I pass the following order.

ORDER

It is hereby held that there is no termination of service of Shri Rajasab Bagwan, loader by the management of M/s. New Era Handling Agency, Vasco, with effect from 23-3-90. It is hereby further held that the workman Shri Rajasab Bagwan, is not entitled to any relief.

No order as to cost. Inform the Government accordingly.

Sd/-
(Ajit J. Agni),
Presiding Officer,
Industrial Tribunal.

Notification

No. 28/1/2004-LAB

The following Award passed by the Industrial Tribunal of Goa, at Panaji-Goa on 5-4-2004 in reference

No. IT/13/82 is hereby published as required by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

Vasanti H. Parvatkar, Under Secretary (Labour).

Panaji, 28th April, 2004.

IN THE INDUSTRIAL TRIBUNAL
GOVERNMENT OF GOA
AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. No. IT/13/82

Workmen Rep. by
The President,
Fomento Employees Union,
354, Comba,
Margao-Goa.

... Workman

V/s

M/s. Sociedade de Fomento I. Pvt. Ltd.,
Margao-Goa.

... Employer

Workmen/Party I - Represented by Adv. Shri K. V. Nadkarni.

Employer/Party II - Represented by Adv. Shri B. G. Kamat.

Dated: 5-4-2004.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947, the Government of Goa, by order dated 15th February, 1982 bearing No. 28/1/79-I.L.D. referred the following dispute for adjudication of this Tribunal.

"Whether the action of employer of M/s. Sociedade de Fomento Industrial Private Ltd., Margao, Salcete, Goa, retrenching the services of S/Shri Subhash Kulkarni; Uday Borkar; Shreekant Malkarnekar; Uttam Salelkar; Kashinath Gaude; Miss Nayan J. Prabhudessai, Miss Marcelina Fernandes and Shri Suresh T. S. Kakodkar, with effect from 24-11-79 is legal and justified?"

If not, to what relief the workmen are entitled?"

2. On receipt of the reference a case was registered under No. IT/13/82 and registered A/D notice was issued to the parties. In pursuance to the said notice the parties put in their appearance. The Workmen/Party I (for short, "Union") filed its statement of claim in support of its contention that termination of services of the workmen by the employer/party II (for short "employer") is illegal and unjustified. The facts of the case in brief as pleaded by the union are that the workmen namely S/Shri Subhash Kulkarni; Uday Borkar; Shreekant Malkarnekar; Uttam Salelkar; Kashinath

Gaude; Miss Nayan J. Prabhudessai, Miss Marcelina Fernandes and Shri Suresh Kakodkar, (for short "Workmen") were employed with the employer company as per the appointment letters issued to them. That right from the date of formation of the company and the employment of the workmen, till the year 1977 there were no service rules in the employer company and also the employees employed in the head office were not given proper service benefits. That there was discrimination in the matter of sanctioning various benefits to the employees employed in mines and other establishments and to those employed in the head office. That the employees employed at the head office were made to work extra hours of work but were not paid over time and even their extra hour of work was not compensated. That there was discrimination between the employees working at the head office and those working at the other establishments of the employer, even regarding holiday, leave benefit, pay scales and wage benefits like D.A., V.D.A., H.R.A., and other benefit. As a result of indifferent discrimination between the head office employees and the employees employed outside the head office, the employees in the head office decided to form an union and in the year 1977 formed an union which was registered under the Indian Trade Union Act, 1926 known as Fomento Employees Association, with office at Borda, Margao, Goa. That on coming to know about the formation of the union Mr. Modu Timblo, Chairman and the Managing Director, of Fomento Group of Companies started harassing the employees and in particular the office bearers of the union. That he also pressured the union members to leave the union and disassociate themselves from trade union activities but he did not succeed. That thereafter said Mr. Modu Timblo arranged a get-together of all the employees employed in the head office in the month of June, 1977 and in the said get-together he declared the appointment of grievances committee to look into the grievances of the employees in the head office and Mr. J.V. Advani, then Chief Accountant of the Company was appointed as the Chairman of the said grievances committee. That the employees who were present for the get-together expected that their Chairman will keep up the promise and solve the grievances and remove the disparities. That on the next day Mr. Modu Timblo made an appeal to the staff members by calling office bearers of the union and stated that since he had made a declaration to remove the disparities and solve the grievances in the head office, they should dissolve the union and requested the Executive Committee members of the union to send a resolution to the Labour Commissioner about the dissolving of the union. That thereafter Mr. Modu Timblo himself got prepared a resolution in the name of the union and got the signatures of the individual member on the said resolution and forwarded the said resolution to the Registrar of Trade Union and Labour Commissioner and desputed a special representative of the company and completed the formalities of dissolution of the union expeditiously. That thereafter Mr. Modu Timblo changed his attitude and behaviour towards the employees

working in the head office and unilaterally abolished the pay scales of a number of employees and instead of solving the grievances and removing disparities aimed at breaking the unity of the employees and eradicating the trade union activities from the head office. That the workers working in the head office had no other alternative but to reorganize themselves and therefore they formed a trade union called "Fomento Employees Union" and registered it in the year 1979 under the Trade Union Act. That the main objective of the said union was to organize the employees in the head office and protect them from the vindictive actions of Mr. Modu Timblo and to safeguard their interest and achieve better service conditions and remove disparities created by the management. That the formation of the union was intimated to the management and thereafter a charter of demands was submitted to the employees for revision of pay scale and various other service benefits. That a dispute was also raised before the Labour Commissioner in respect of charter of demands and in the conciliation proceedings held, the management participated but delaying tactic was adopted in order to gain time, and on the other hand Mr. Modu Timblo was employing various pressure, intimidative and harassment tactics against the employees which including transferring of some employees from one department to another and making some employees to sit idle. That the same was done to discredit union office bearers in the eyes of other staff members, who were employees of the employer and the members of the said union. That ultimately the union severed on the management a notice proposing to proceed on indefinite strike as it was realized that the response of the management in the conciliation proceedings was not positive. That after the strike notice was given the Labour Commissioner intervened and after several discussions, settlement was arrived at, which was signed under section 2 (P) of the Industrial Disputes Act, 1947 on 28-5-1979. That Mr. Modu Timblo had habit of visiting the office and going around various departments and scolding the office staff openly in the department. During his visits right from June, 1979 he openly declared to the staff members that any person or staff members working at the head office and forming a union or becoming a member of the same or participating in the trade union was a conspirator against him and an enemy to his organization. That Mr. Modu Timblo started calling individually in his chamber, the office bearer of the union one by one and demand their resignation from the union and insisted that the executive committee members should dissolve the union once again. That the executive committee members were given promises of promoting them to executive post in various new projects of the company, which included 5 star hotel at Dona Paula. That when he found that the employees were not surrendering to his wishes he started threatening them of dismissing them from service. That thereafter Mr. Modu Timblo started his normal practice of harassing the workers by removing the tables or their daily work and making them sit idle and the victims of his usual tactic were the president and the vice president of the

union namely Shri Suresh Kakodkar and Shri Subhash Kulkarni whose work was removed and they were made to sit idle in the department without work and further the connection of the telephone extensions and intercom phones retained on the table was disconnected. That in view of the harassment and victimization tactics on the part of the management led by Mr. Modu Timblo, the employees at the head office were compelled to the lightning strike from the evening of 21-8-1979 on which date the services of Shri Suresh Kakodkar, the president of the union were terminated. That the strike lasted for about seven and a half days and it was called off after an agreement was signed on 28-8-1979. That after the agreement was signed, few days thereafter the management shifted almost all the department from Gosalia building to Villa Flores de Silva building, which was a small place and it could not accommodate 120 staff members. That Mr. Suresh Kakodkar was removed from the accounts department and was made to sit in the garage among the Drivers and the Mechanics and Mr. S. M. Kulkarni was shifted from Cash Department, was made to sit in an empty department without any work, wherein the other staff members were made to sit idle without any work which included Mr. Uday Borkar, Treasurer of the union, Mr. N. V. Mhapsekar, Joint Secretary of the union, Mr. K. A. Kulkarni, active member of the union. That as a result of the above victimization and aggressive attitude of Mr. Modu Timblo, the union and all its members by resolution decided to merge with the mining union of Fomento Mines and come under the banner of CITU. That as per the agreement dated 28-8-1979 it was expressly agreed between the management and union that any matter relating to all concerned the surplus staff at the head office shall be settled after prior discussion and negotiation with the leaders of the union and that of future issues or problems connected with the head office employees will be discussed by CITU leaders. That the management violated clauses 2, 3 and 7 of the said agreement by retrenching 9 workers during the last week of October 1979 and when the agreement was not conferred. That on 26-10-1979 the employer issued individual letters to the workmen in the present reference purporting to terminate their services under Section 25 (F) of the Industrial Disputes Act, 1947. The union contended that the notices of the termination issued under Section 25 (F) of the Act are illegal, invalid and bad in law and the action of the management was a case of victimization and unfair labour practice and is intended to satisfy the urge and ego of Mr. Modu Timblo. The union contended that the management failed to comply with Chapter V-A and V-B of the Industrial Disputes Act, 1947 and also failed to follow the procedure as laid down under Section 25 (F) and 25 (G) of the said Act. The union contended that in terms of the agreement dated 28-8-1979 it was obligatory on the part of the management to discuss the issue of retrenchment or for that matter the issue of surplus staff with the union before taking any action. That due to the indifferent and pro-employer attitude of the Labour Department the employees working in the head office were left with no

other alternative but to resolve to strike from 9-11-1979 in support of the 9 workers who were illegally retrenched. That the office of the Labour Commissioner intervened in the dispute only after the employees resorted to a strike and called parties for discussion on the issue of illegal retrenchment of the 9 workers. That an understanding was reached before the Asst. Labour Commissioner on 17-11-1979 and as per the said understanding the workmen who had resorted to strike went to the office to resume duties but the management demanded personal apology from all the workmen who were on strike and also their resignation from the primary membership of the union. That this matter was reported to the Commissioner by the union vide letter dated 23-11-1981 along with a copy of draft of apology letter demanded by the management and in the said letter the Labour Commissioner was informed that the staff members have resigned from the union under pressure. That the staff members who tendered apology and who resigned from the union were allowed to resume duties and no action was taken against them. That in the mean time the management displayed a notice on the notice board suspending the services of about 29 employees from service w.e.f. 29-11-1979 who had gone on strike in support of their colleagues who were illegally retrenched. That after the conciliation meeting of 17-11-1979 the management having realised the illegality of their order of retrenchment of 9 employees dated 31-10-1979, reviewed the said retrenchment orders and issued fresh orders of retrenchment dated 24-11-1979 to each of the employees who are the parties to the present dispute. That the said orders of retrenchment dated 24-11-1979 covered compensation towards retrenchment upto 25-11-1979 and the said orders were not received by any employee on or before 25-11-1979. That is second dispute in the matter of retrenchment dated 24-11-1979 was raised by the union by a separate dispute which was taken up simultaneously and joined with the first conciliation proceedings which were in progress in respect of the retrenchment carried out earlier by the management vide retrenchment order dated 31-10-1979. That a failure report was submitted by the conciliation officer in respect of both the orders of retrenchment dated 31-10-1979 and 24-11-1979. That in the order of retrenchment dated 24-11-1979 the management has stated that they have retrenched the services of the workmen because the company was experiencing adverse trading conditions due to the various reasons, the main reason being fall in the export of Iron Ore and rise in the cost of materials and other items required for the production of iron Ore. The union contended that the company has been progressing and prospering inspite of the retrenchment of the workmen in the present reference and the export figures and the earnings on which union relies upon would establish that there were no adverse trading conditions at the time of retrenchment or now. The union contended that the company has been employing new employees after termination of the services of the workmen and the company has reemployed Mr. Uttam Salelkar whose

services were earlier retrenched by the company. The union contended that after the retrenchment the company has entered into two new ventures, one by opening a five star hotel and the other by departmental store thereby employing more employees but the workmen who have been retrenched were never reemployed under Section 25 (H) of the Industrial Disputes Act, 1947 though the said provision makes it obligatory on the employer to provide an opportunity of reemployment of the retrenched employees. The union contended that all the retrenched workmen were the active members of the union and they were actively participating in the various trade union activities in the head office. The union contended that the retrenchment of the workmen is in violation of the mandatory provisions of Chapter V-A and Chapter V-B of the Industrial Disputes Act, 1979 and also it is in violation of the provision of Section 25 (F), 25 (G) and 25 (H) of the said Act read with rule 78 of the Central Rules, 1957. The union contended that the employer has violated the settlement/agreement dated 28-8-1979 arrived at between the management and the union. The union contended that the retrenchment orders dated 24-11-1979 which are signed by the Administrative Manager, Mr. V. P. Raikar, are bad in law as said Mr. Raikar is not the appointing authority of the workmen in dispute and incompetent to sign the said orders. The union stated that the financial condition of the company is strong and the reasons given for retrenchment are the false reasons which do not justify retrenchment. The union therefore prayed that the workmen except Shri Uttam Salelkar, who has been reinstated in service be awarded the relief of reinstatement in service with back wages or adequate compensation.

4. The employer filed written statement denying the conditions made by the union in the statement of claim. The employer stated that the affairs of the company are managed by Shri Modu Timblo and other directors in accordance with the provisions of the company law and other statutes for the time being in force. The employer denied that the mining industry has been expanding by leaps and bounds as contended by the union and further denied that the industry is prospering and has a sound and bright future. The employer admitted that the dispute has arisen on account of retrenchment of the 8 workmen who are parties to the present reference. The employer however denied that the retrenchment of the said 8 workmen is illegal or the retrenchment has been effected because the said 8 workmen were indulging in trade union activities. The employer denied that the retrenchment was effected by Shri Modu Timblo because the said 8 workmen refused to bow down to his wishes and/or refused to abandon their trade union activities. The employer denied that threats were given to the said workmen of dismissing them from service either directly by Shri Modu Timblo or by his officials. The employer denied that the retrenchment of the workmen is illegal, unjustified, invalid, malafide or that the company had been starting new establishments and employing new employees. The employer denied that the retrenchment

was brought about solely to satisfy the personal urges, ego of Shri Modu Timblo and to eradicate trade union activities from the head office. The employer denied that the employees at the head office were not given proper service benefits or there were discriminations in the matter of sanctioning of various benefits. The employer denied that the employees employed at the head office were made to work extra hours of work without over time payments. The employer denied that there was indiscriminate discrimination between the head office employees and the employees employed outside the head office. The employer stated that the management always recognizes the right of the workers to form their trade unions and the management has been dealing with these unions in the matter of various demands raised by the workmen. The employer denied that the Managing Director, Shri Modu Timblo started harassing the staff members in general and office bearers in particular because he came to know of the forming of the trade union or that he brought pressure on the employees to disassociate themselves from all the trade union activities and demanded their resignations. The employer admitted that at the get together Shri Modu Timblo told the employees that within the permissible limits he would consider their demands/grievances sympathetically and try to solve them by bilatory talk with the union. The employer denied that any grievance committee was appointed and stated that when the committee members called on Shri Modu Timblo on the next day, they were informed that their grievances will be studied by Shri J. V. Advani, the then Chief Accountant of the company. The employer denied that the executive committee members were called by Shri Modu Timblo and he requested them to sign the resolution of dissolution of the union and sent the said resolution to the Labour Commissioner. The employer stated that Shri Modu Timblo, the Managing Director of the company, and the other directors and executives of the company had nothing to do either with the formation of the union and/or the dissolution of the union. The employer denied that there was change in attitude or behaviour of Shri Modu Timblo towards his employee in the head office or that he acted in a vindicate manner with the sole intention of breaking the unity of the workmen or to destroy or demolish trade union activities from the head office. The employer denied that the formation of the union was a necessity on account of various types of harassments given to the staff members of the head office and that the said harassments including use of abusive words, scolding and shouting. The employer denied that any member of the union was called by Shri Modu Timblo in his chamber and was threatened of dismissal from service. The employer admitted that the charter of demands was submitted by the union but denied that the employer resorted to harassments and delaying tactics. The employer stated that the charter of demands was submitted on 17-3-1979 and a settlement was arrived at within two months from the date of the said charter of demands. The employer denied that the employees at the head office resorted to strike because of the harassments and victimization from the

management led by Shri Modu Timblo. The employer denied that the terms of the settlement dated 28-8-1979 were violated by the employer. The employer admitted that the services of the 8 workmen concerned in the present reference were terminated by notice dated 24-11-1979 and further stated that the retrenchment notice dated 24-11-1979 were served on each and every employee covered under the order of reference. The employer denied that the management failed to comply with Charter 5-A and 5-B of the Industrial Disputes Act, 1947 or violated the provisions Section 25 (F) of the said Act. The employer denied that the company has been progressing and prospering despite the retrenchment of the 8 workmen and further denied that new employees were employed in place of the retrenched employees. The employer denied that their Administrative Manager, Shri V.P. Raikar was not empowered to issue the retrenchment orders dated 24-11-1979 or that he was not competent to issue such letters or that the said retrenchment orders are invalid, bad in law and not abiding on the concerned workmen. The employer stated that the retrenchment at the head office was done on account of excessive over rate at the head office contributing to uneconomic situation and the same was effected by way of resorting to austerity measures arising out of re-organisation. The employer stated that the management has taken into account the requirement of work people and also taken care that the retrenchment effect will not be counter productive. The employer denied that the retrenchment of the workmen is illegal, invalid, or void. The employer denied that the financial conditions of the company is strong. The employer denied that the workmen are entitled to any relief as claimed by them. The union thereafter filed rejoinder controverting the pleadings made by the employer in the written statement.

5. On the pleadings of the parties following issues were framed.

1. Whether the employer proves that the retrenchment of the concerned workmen is bonafide and justified?
2. Whether the employer proves that Shri Raikar, Administrative Manager of the Company was empowered to issue the retrenchment order?
3. Whether the union proves that the employer, after harassing the workers in various ways carried out the retrenchment in question, which is an act of victimization for their union activities?
4. Whether the union proves that the retrenchment is also in violation of clauses 2, 3 & 7 of the agreement between the parties dated 28-8-1979?
5. Whether the union proves that the employer failed to comply with Chapter V-A and V-B of the Industrial Disputes Act, 1947 and to follow the procedure laid down under Section 25 F, 25 G and 25 H of the said Act?

6. My findings on the issues are as follows:

- Issue No. 1: Does not arise.
- Issue No. 2: Does not arise.
- Issue No. 3: Does not arise.
- Issue No. 4: Does not arise.
- Issue No. 5: Does not arise.

REASONS

7. Adv. Shri B. G. Kamat, the learned advocate for the employer submitted in the course of his arguments that the question of giving findings on the issues framed by this Tribunal does not arise as the reference made by the Government is incorrect, improper and bad in law and hence the same is liable to be rejected. He submitted that in the schedule of the order of reference dated 15th February, 1982 the date of termination of service of the workmen is mentioned as 24-11-1979, which he said is incorrect. He submitted that the letter dated 24-11-1979 issued individually to all the workmen mentions that the services of the workmen are terminated with effect from 25th November, 1979. He submitted that the workman, Shri Suresh Kakodkar has admitted in his cross-examination that the termination letter is issued on 24-11-1979 and he has stated that the termination is effective from 26-11-1979. He submitted that the union itself had filed an application dated 30-4-1990 before this Tribunal admitting that the reference made by the Government is bad since the date of termination of service is mentioned as 24-11-1979 instead of 25-11-1979. He submitted that in the said application though the union stated that they want to get the reference amended and get the date of termination corrected as 25-11-1979 no amendment of the reference was sought by the union. He submitted that the Tribunal has no powers to correct or alter the terms of the reference or to correct the name or date of termination. He submitted that if the Tribunal alters or amends the date of termination and passes an award the same is bad in law. He submitted that the reference made by the Government is itself bad in law and hence the same is liable to be rejected. In support of his above contention he relied upon the judgment of the Rajasthan High Court in the case of Suresh Chandra v/s General Manager, Rajasthan State Bridge and Construction Corporation, reported in 2002 (3) L.L.N. 1212. Shri K. V. Nadkarni representing the union admitted that as per the letter of termination dated 24-11-1979 the services of the workmen were terminated from 25-11-1979 and that in the reference the date of termination has been mentioned as 24-11-1979, which is incorrect. He admitted that in the application dated 30-4-1990, the union had stated that they would seek the amendment of the reference and get date of termination corrected. Shri Nadkarni however submitted that he is not aware whether the union had moved the Government for amending the reference. He submitted that the judgment of the Rajasthan High Court cannot be applied to the present case.

8. The point which has been raised by Adv. Shri B. G. Kamat, the learned advocate for the employer goes to the very root of the matter. The order of reference dated 15th February, 1982 mentions the dispute, which is referred to this Tribunal for adjudication. As per the said order of reference the dispute which is referred for adjudication is whether the action of the employer in terminating the services of the workmen namely Shri Subhash Kulkarni, Shri Uday Borkar, Shri Shreekanth Malkarnekar, Shri Uttam Salelkar, Shri Kashinath Gauda, Miss Nayan J. Prabhu Dessai, Miss Marcelina Fernandes and Shri Suresh T. S. Kakodkar w.e.f. 24-11-1979 is illegal and unjustified. Thus it can be seen that as per the reference the date of termination of service of the workmen is from 24-11-1979. The union has examined the workmen Shri Suresh Kakodkar, Shri Uday Borkar and Shri Subhash Kulkarni. The letter of termination of service dated 24-11-1979 issued to Shri Subhash Kulkarni has been produced at Exb. 24, the letter of termination of service dated 24-11-1979 issued to Shri Suresh Kakodkar has been produced at Exb. W-1, and the letter of termination of service issued to Shri Uday Parab has been produced at Exb. 17. In all these letters it is mentioned that their services are terminated from 25-11-1979. However, the retrenchment compensation covered was upto 25-11-1979. The union has stated in the statement of claim that each of the workmen in the present dispute were issued letter of termination dated 24-11-1979 and that the same covered compensation towards retrenchment upto 25-11-1979. Therefore the services of all the workmen in the present dispute were terminated from 25-11-1979 vide letter dated 24-11-1979. The workman Shri Suresh Kakodkar in his evidence that is in his cross-examination has not admitted that the date of termination of service is from 24-11-1979. He has stated that though the letter is dated 24-11-1979, the termination is effective after office hours on 25-11-1979 that is before office hours on 26-11-1979. Thus according to the workmen themselves their services were terminated after the closing hours of 25-11-1979 and not from 24-11-1979. This is also evident from the application dated 30-4-1990 filed by the union. In this application the union has stated that while making the reference, the date of termination of service is mentioned as 24-11-1979 when the actual date of termination is 25-11-1979 and as such the order of reference is in-fructuous and has to be amended. It is further stated in the said application that the union is approaching the Government with a request to amend the reference by correcting the actual date of termination as 25-11-1979 and not 24-11-1979. The matter was adjourned to enable the union to get the reference amended. From the above letter it is clear that the union itself has admitted that the date of terminated has been wrongly mentioned in the order of reference as 24-11-1979 when it is 25-11-1979 and that in view of the above the order of reference is in-fructuous.

9. Adv. Shri B.G. the learned advocate for the employer has relied upon the judgment of the Rajasthan High Court in the case of Suresh Chandra (Supra) in support

of his contention that the reference made by the Government is bad in law and is liable to be rejected because the date of termination of service mentioned in the reference is a wrong one. In the above case the contention of the workman was that he had worked from 26th September, 1979 to 28th February, 1987 and his services were terminated from 1st March, 1987 without complying with the provisions of the Industrial Disputes Act, 1947. The Government made the reference to the labour court as to whether the termination of service of the workman with effect from 1st March, 1989 was justified and if not to what relief he was entitled to. The labour court after appreciating the evidence produced by the parties held that the workman had completed 240 days but since 13 years had passed, instead of granting reinstatement awarded a sum of Rs. 38000/- as compensation. In Writ Petition before the High Court, the employer raised the issue that the reference made by the government was bad and therefor the Award was nullity, because according to the workman himself his services terminated from 1st March, 1987 whereas the reference was in respect of the termination of service from 1st March, 1989. It was submitted on behalf of the workman that the parties led evidence knowing that the services of the workman were retrenched from 1st March, 1987 and as the parties were aware of the real dispute the award cannot be held to be nullity for want of jurisdiction. It was further submitted that the labour court itself had considered the issue and come to the conclusion that though the reference was in respect of termination with effect from 1st March, 1989 it proceeded as if the termination was from 1st March, 1987 as per the claim of the workman and while doing so the labour court itself amended the reference accordingly to do justice between the parties and therefore no interference was required. The High Court however did not agree with the submissions made on behalf of the workman. The High Court relying on various judgments of the Supreme Court held that jurisdiction cannot be conferred by mere acceptance, acquiescence, consent or by any other means, as it can be conferred only by the legislature. The High Court held that the labour court lacks competence to correct/modify, amend/alter the terms of the reference or correct the name or date of termination etc. and in case it does so, the award becomes nullity, being without jurisdiction, based on bad reference. The High Court therefore declared that the award of the labour court was nullity, unenforceable and in executable and hence set aside the same.

10. The above judgment of the Rajasthan High Court, which is based on various judgments of the Supreme Court referred to in the said judgment, applies to the present case. In the present case also the date of termination of service of the workmen has been wrongly mentioned as 24-11-1979 when the actual date of termination is 25-11-1979. This is an undisputed fact. The union itself in its application dated 30-4-1990 filed before this Tribunal had admitted that in the reference the date of termination is wrongly mentioned as 24-11-1979 instead of 25-11-1979 and that because of

that the order of reference is in fructuous. Thus the union had itself admitted that the reference made by the Government is bad in law. The union had further stated in the said application that it would move the Government for amending the reference and get the date of termination of service corrected. However, the union did not take any step to get the reference amended and thereby get the date of termination corrected, when the union was very well aware that the order of reference was bad in law for not mentioning the correct date of termination. In the process there is no amendment to the order of reference correcting the date of termination as 25-11-1979 for which the union itself is responsible as inspite of being aware it did not get the date of termination corrected by approaching the Government. The reference made by the Government is therefore bad in law and any award passed in respect of the said reference would be a nullity. In circumstances I hold that the reference made by the Government is bad in law and hence the same is liable to be rejected. Since the reference made by the Government is itself bad in law and is liable to be rejected the question of deciding the issue Nos. 1 to 5 does not arise and I hold so accordingly.

In the circumstances I pass the following order.

ORDER

It is hereby held the reference made by the Government is bad in law and hence the same is rejected.

No order as to cost. Inform the Government accordingly.

Sd/-
(Ajit J. Agni),
Presiding Officer,
Industrial Tribunal.

Notification

No. 28/1/2004-LAB

The following Award passed by the Industrial Tribunal of Goa, at Panaji-Goa on 6-4-2004 in reference No. IT/02/88 is hereby published as required by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

Vasanti H. Parvatkar, Under Secretary (Labour).

Panaji, 28th April, 2004.

IN THE INDUSTRIAL TRIBUNAL
GOVERNMENT OF GOA
AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. No. IT/2/88

Workmen, represented by
Goa Trade & Commercial Workers Union,
Velho's Building, 2nd Floor,
Panaji. ... Workmen/Party I

V/s

M/s. Mc. Dowell and Co. Ltd.,
Bethora,
Ponda-Goa. ... Employer/Party II

Workmen/Party I - represented by Shri Subhash Naik.

Employer/Party II - Represented by Adv. Shri G. K. Sardesai.

Dated: 6-4-2004.

AWARD - PART - II

In exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (Central 14 of 1947), the Government of Goa by order dated 6-1-1988 bearing No. 28/8/87-ILD referred the following dispute for adjudication of this Tribunal.

"Whether the action of the management of M/s. Mc Dowell and Company Limited, Bethora, Ponda, Goa, in terminating the services of the following workmen with effect from the dates shown against their respective names is legal and justified?"

Sr. No.	Name	Designation	Date of termination
1.	Shri R. B. Shirodkar	Store Keeper	24-5-1986
2.	Shri Narayan K. Naik	Workman	20-4-1987
3.	Shri Bhanudas T. Gaunkar	Workman	20-4-1987
4.	Shri Sadanand Dhavlikar	Workman	20-4-1987

If not, what relief the workmen are entitled to?"

2. On receipt of the reference a case was registered under No. IT/2/88 and registered A/D, notice was issued to the parties. In pursuance to the said notice the parties put in their appearance. The Workmen/Party I (for short, "Union") filed statement of claim at Exb. 4 in support of its contention that termination of service of the workmen whose names are mentioned in the order of reference is illegal and unjustified. The union claimed that the said workmen are entitled to reinstatement with full back wages and other consequential benefits. During the pendency of the above reference

the dispute concerning the workmen Shri Narayan K. Naik, Shri Bhanudas T. Gaunkar and Shri Sadanand Dhavlikar was settled and subsequently consent award dated 12-2-1999 was passed. Since the dispute regarding the workman Shri R. B. Shirodkar was not settled the case was proceeded with only as regards to his dispute.

3. After the evidence on behalf of Union and on behalf of the Employer/Party II (for short 'employer') was recorded, the case was fixed for hearing final arguments. At this stage the parties submitted that the dispute between the workman Shri R. B. Shirodkar and the employer has been amicably settled and they filed the terms of the settlement dated 19-3-2004 along with the application dated 19-3-2004 at Exb. 39 praying that an award be passed in terms of the said settlement. I have gone through the terms of the settlement which are duly signed by the parties and I am satisfied that the said terms are certainly in the interest of the workman Shri R. B. Shirodkar. I therefore accept the submission made by the parties and pass the consent award in terms of the settlement dated 19-3-2004.

ORDER

1. It is agreed that Mr. Rohidas B. Shirodkar shall be treated as having resigned from service.
2. It is agreed that Mr. Rohidas B. Shirodkar shall be paid an amount of Rs. 256933:50 (Rupees two lakhs fifty six thousand nine hundred thirty three and paise fifty only), as Salary/Subsistence Allowance vide crossed Pay Order No. 002709 dated March, 19, 2004 drawn on The Bicholim Urban Co-op. Bank Ltd., Ponda.
3. It is agreed that Mr. Rohidas B. Shirodkar shall be paid an amount of Rs. 488071:31 (Rupees four lakhs eighty eight thousand seventy one and paise

thirty one only), as V.D.A. vide crossed Pay Order No. 002710 dated March 19, 2004 drawn on The Bicholim Urban Bank Ltd., Ponda.

4. It is agreed that Mr. Rohidas B. Shirodkar shall be paid an amount of Rs. 14967:00 (Rupees fourteen thousand nine hundred sixty seven only), as Retrenchment Compensation vide Crossed Pay Order No. 002711 dated March 19, 2004 drawn on The Bicholim Urban Co-op. Ltd., Ponda.
5. It is agreed that Mr. Rohidas B. Shirodkar shall be paid an amount of Rs. 23026:15 (Rupees twenty three thousand twenty six and paise fifteen only), as Gratuity vide Crossed Pay Order No. 002712 dated March 19, 2004 drawn on the Bicholim Urban Co-op. Bank Ltd., Ponda.
6. It is agreed that Mr. Rohidas B. Shirodkar shall be paid an amount of Rs. 17002:04 (Rupees seventeen thousand two paise four only), as Ex-gratia vide Crossed Pay Order No. 002714 dated March 19, 2004 drawn on The Bicholim Urban Co-op. Bank Ltd., Ponda.
7. In view of the above, the Management and the Workman agree that the reference IT/2/28 shall not be pursued as it is fully and finally settled and the parties agree to make a joint application to the Hon'ble Tribunal to pass an Award in terms of the Settlement.

No order as to cost. Inform the Government accordingly.

Sd/-
(Ajit J. Agni),
Presiding Officer,
Industrial Tribunal.